

# BakerHostetler

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January 25, 2021

### VIA ECF

The Honorable Stuart M. Bernstein  
United States Bankruptcy Judge  
Southern District of New York  
One Bowling Green  
New York, NY 10004-1408

*Re: Irving H. Picard v. James Greiff*, Adv. Pro. No. 10-04357

Dear Judge Bernstein:

We are counsel to Irving H. Picard, trustee (the “Trustee”) for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III. The Trustee writes in response to defendant’s letter dated January 25, 2021 (ECF No. 139), seeking to have the upcoming final pre-trial conference held or continued on a closed line without public record. While the Trustee has no objection to a continuance of the conference, the Trustee does feel the need to correct the record of these proceedings.

After engaging in several months of working on completion of all necessary pre-trial tasks, the defendant now states that “he is not in a position to contest liability for the two-year transfers and there need not be a trial on that liability.” *See id.* The bulk of the pre-trial work has been completed, including (i) exchanging exhibits and deposition designations; (ii) objections to the Trustee’s exhibits and deposition designations; and (iii) drafting and revising a final Joint Pre-Trial Order, which the parties submitted to Chambers on consent on January 20, 2021. The Trustee submits that defendant’s assertion of an inability to “contest” this action, with nothing more, is not grounds to delay scheduling the trial date or for a protective order to seal the hearing. *See Fed. R. Civ. Pro. 26(c); In re Parmalat Securities Litigation*, 258 F.R.D. 236, 242–43 (S.D.N.Y. 2009) (party seeking a protective order has the burden to establish good cause; good cause analysis is informed by the presumptions of public access) (citations omitted).

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The Trustee and SIPC request that the pre-trial conference currently scheduled for January 27, 2021 at 10:00 a.m., be adjourned for a brief period of time due to a conflict with a hearing before Chief Judge Morris in *Picard v. Estate of Seymour Epstein, et al.* (Adv. Pro. No. 10-04438), scheduled for the same time. The Trustee and SIPC did not perceive this as a conflict when we believed that we were moving forward with a conference to schedule trial. Given the defendant's position, it is important that counsel for the Trustee and SIPC who have been involved in mediations be available to address issues raised by defendant as to his inability to contest liability.

The Trustee remains available to discuss these matters at the Court's convenience.

Respectfully submitted,

*/s/ Nicholas J. Cremona*

Nicholas J. Cremona

Partner

cc: (via email)  
Arthur Ruegger, Esq.  
Kevin H. Bell, Esq.